



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0799; FRL-9246-01-R9]

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District; Open Burning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or the “District”) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) and particulate matter (PM) from agricultural open burning. We are proposing to approve additional local restrictions on such burning under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0799 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional

submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

I. The State’s Submittal

- A. Background
- B. What did the State submit?
- C. Completeness Review of the 2021 Technical Submittal
- D. What is the purpose of the submitted SIP revision?

II. The EPA’s Evaluation and Action

- A. How is the EPA evaluating the SIP revision?
- B. Does the SIP revision meet the evaluation criteria?
- C. The EPA’s recommendations to further improve the control measure
- D. Public Comment and Proposed Action

III. Incorporation by Reference

IV. Statutory and Executive Order Reviews

I. The State’s Submittal

A. Background

Most open burning activities in the San Joaquin Valley Air Basin (“San Joaquin Valley”) are regulated by District Rule 4103 “Open Burning” (“Rule 4103” or “the Rule”), which was most recently revised by the District on April 15, 2010. Rule 4103’s provisions on open burning of agricultural waste, which constitutes the bulk of activity regulated under this local measure, are implemented as a part of a broader state-wide strategy on agricultural open burning, codified in California Health and Safety Code sections 41855.5 and 41855.6. Under Rule 4103’s provisions implementing those State law requirements, the SJVUAPCD may grant a temporary

postponement of the prohibition of open burning for specific agricultural material categories, if the following four criteria are all met: 1) the SJVUAPCD Governing Board (“District Board”) determines that there is no economically feasible alternative of eliminating the waste; 2) the District Board determines that there is no long-term Federal or State funding commitment for the continued operation of biomass combustion facilities in the San Joaquin Valley or development of alternatives to burning; 3) the District Board determines that the continued issuance of permits for that specific category or crop will not cause, or substantially contribute to, a violation of an applicable Federal ambient air quality standard; and 4) the California Air Resources Board (CARB or the “State Board”) concurs with the District Board’s determinations.¹ The District’s staff reports and the associated District Board and CARB resolutions approving the postponements must be submitted to the EPA as SIP revisions.²

The EPA approved Rule 4103 and an initial prohibition schedule (“2010 Schedule”) (entitled “Table 9-1, *Final Staff Report and Recommendations on Agricultural Burning*”) into the SIP on January 4, 2012.³

B. What did the State submit?

On November 29, 2021, CARB submitted a document entitled “Proposed District Rule 4103 (Open Burning) Technical Submittal for Receiving SIP Credit for Reductions in Agricultural Burning,” dated November 18, 2021 (the “2021 Technical Submittal”), to the EPA for inclusion in the California SIP.⁴ The 2021 Technical Submittal includes a document called the “Supplemental Report and Recommendations on Agricultural Burning” (“2021 Supplemental Report”). Table 2-1 of the 2021 Supplemental Report, “Accelerated Reductions by Crop Category” includes an updated schedule of prohibitions (“2021 Schedule”), which is the focus of our rulemaking. Further discussion and explanation of this material is detailed in section I.D of

¹ Rule 4103, section 5.5.2.

² Id. section 6.3.

³ 77 FR 214.

⁴ CARB had previously submitted a proposed version of this document with a request for parallel processing pursuant to 40 CFR part 51, appendix V, section 2.3.1. The only substantive revision in the final document was the addition of a response to public comments submitted during the public comment period and hearing.

this proposed rule.

C. Completeness Review of the 2021 Technical Submittal

Section 110(k)(1)(B) of the CAA requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. The EPA's SIP completeness criteria are found in 40 CFR part 51, appendix V. The EPA has reviewed the 2021 Technical Submittal and finds that it fulfills the completeness criteria of appendix V.

D. What is the purpose of the submitted SIP revision?

The open burning of various materials regulated under the District's authority, including agricultural waste, generates emissions of NO_x and PM. Emissions of NO_x contribute to the production of ground-level ozone, smog, and PM, which harm human health and the environment. Direct emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM_{2.5}) and PM equal to or less than 10 microns in diameter (PM₁₀), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) and title I, part D of the CAA require states to submit regulations that control NO_x and PM emissions.

Under the provisions of California Health and Safety Code sections 41855.5 and 41855.6 and SIP-approved District Rule 4103, the District must review at least once every five years the feasibility for prohibition from open burning the remaining categories of agricultural waste that were previously found to be infeasible under the four criteria described above in section I.A. That review results in a "District Staff Report and Recommendations on Agricultural Burning," which must be approved by the District Board and receive concurrence from the State Board in order to become effective. The District reports have in the past contained a schedule for prohibiting additional categories of agricultural waste from open burning, additional limitations on open burning for that category, or a determination that open burning should be allowed. This schedule implements sections 5.5.2 and 6.3 of the Rule and supports the enforceability of the

control requirements in Rule 4103. Therefore, it must be approved into the SIP to ensure the integrity of the control strategy. As noted above, the EPA approved the 2010 Schedule into the SIP in 2012.

Pursuant to Rule 4103 section 5.5.2, the District adopted the 2021 Supplemental Report, including the 2021 Schedule, on June 17, 2021. The CARB Executive Officer concurred on the 2021 Schedule in a letter dated June 18, 2021, effective through December 31, 2024.⁵ The 2021 Schedule thus constitutes the enforceable measure needed to update the SIP-approved open burning control measure.

The 2021 Schedule prohibits open burning for several previously postponed categories of agricultural waste effective January 1, 2021, and establishes a schedule for phase-out of open burning for other categories including vineyard removals, orchard removals, and surface harvested prunings by January 1, 2025. The EPA's technical support document (TSD) has more information about the specific requirements in the 2021 Schedule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the SIP revision?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

The San Joaquin Valley is designated and classified as an Extreme nonattainment area for the 1979 1-hour and 1997, 2008, and 2015 8-hour ozone national ambient air quality standards (NAAQS).⁶ CAA section 172(c)(1) requires ozone nonattainment areas to implement all reasonably available control measures (RACM), including such reductions in emissions from

⁵ The State Board had delegated the authority for this concurrence on February 25, 2021.

⁶ 40 CFR 81.305.

existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable. While our stringency discussion below focuses on PM emissions, we are not aware of reasonably available control measures for ozone precursors that are not also best available control measures for PM for this source category.

San Joaquin Valley is designated and classified as a Serious nonattainment area for the 1997, 2006, and 2012 PM_{2.5} NAAQS.⁷ CAA section 189(b)(1)(B) requires Serious PM_{2.5} nonattainment areas to implement best available control measures (BACM), including best available control technology (BACT), within four years after reclassification of the area to Serious. Therefore, SJVUAPCD must implement BACM, including BACT, for PM_{2.5} and PM_{2.5} precursors. Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. Preamble, Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements, 81 FR 58010 (August 24, 2016).

B. Does the SIP revision meet the evaluation criteria?

The 2021 Schedule significantly enhances the overall stringency of the District's open

⁷ Id. For the 2012 PM_{2.5} NAAQS, the EPA reclassified the San Joaquin Valley as Serious nonattainment in a final rule published November 26, 2021. 86 FR 67343. The effective date of this reclassification is December 27, 2021.

burning requirements by prohibiting open burning for most remaining waste types by 2025.

Furthermore, the District and State have justified the remaining postponements on the basis of technical and/or economic feasibility. Although the 2021 Schedule is less stringent than the 2010 Schedule for the rice stubble category, the potential emissions increase from this relaxation is more than offset by the emissions reductions from additional prohibitions on other categories of agricultural waste. Therefore, the EPA's initial evaluation indicates that this SIP revision meets CAA requirements and is consistent with relevant guidance regarding enforceability, stringency, and SIP revisions. The EPA's TSD has more information on our evaluation.

C. The EPA's recommendations to further improve the control measure

The EPA's TSD includes recommendations for the next time the SJVUAPCD modifies the control measure.

D. Public comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted SIP revision because it fulfills all relevant requirements. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the Federal Register]**. If we take final action to approve Table 2-1 and the associated materials, our final action will incorporate this revision into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the following materials: Table 2-1 "Accelerated Reductions by Crop Category" of the "Supplemental Report and Recommendations on Agricultural Burning" and Resolution 21-06-12 that were adopted by the SJVUAPCD Board on June 17, 2021; Resolution 21-4 "San Joaquin Agricultural Burning Assessment" adopted by CARB on February 25, 2021; and the letter dated June 18, 2021 from Richard W. Corey, Executive Officer, CARB, to Samir Sheikh, Executive Director, SJVUAPCD, concurring on the

2021 Supplemental Report. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 16, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

[FR Doc. 2021-27797 Filed: 12/22/2021 8:45 am; Publication Date: 12/23/2021]